

THE CORPORATION JOURNAL

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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

More Pitfalls in Stock Transfers

One hundred shares of U. S. Steel Preferred stood on the company's books in the name of one Bettie Browne. Dividends had been paid to her regularly. One day her certificate, regularly assigned, was presented for transfer in a regular way by a firm of reputable brokers. The transfer was made. Later the company found itself defendants in a suit to recover the amount by which Miss Browne, or Mrs. Casey as she had now become, claimed to have been defrauded in the sale of the stock by the friend who had negotiated the transaction. It seems this friend had withheld something over \$6,000 of the amount realized. The New York Supreme Court held both the broker and the corporation to be liable for that loss, because at the time the certificate was assigned the said Bettie Browne was only nineteen years of age. So, runs the court's conclusion, being under age she had no power to appoint an agent for the transfer of her stock, therefore the corporation which had performed such transfer had done so without authority and must make good any loss arising out of its act. That neither corporation nor broker knew the stockholder's real age, and had had no reason to suspect the fact of her infancy, was held to have been no excuse.

Thus do wholly unsuspected ways of incurring liability in the transfer of a corporation's stock keep cropping up. Not even the small company with very few transfers of its stock is immune from such a set of circumstances. Every day the handling of transfers is becoming more and more a matter that should be left only to trained, expert, experienced specialists. The Corporation Trust Company will gladly submit to any attorney an estimate of its reasonable charges for acting as transfer agent for his client.


PRESIDENT.

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37 Wall Street, New York

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DEPARTMENTS

- Corporation Department**—Assists attorneys in the incorporation of companies and in the licensing of foreign corporations to do business in every state and Canadian province, and subsequently furnishes annual statutory representation service, including office or agent required by statute.
- Report and Tax Department**—Notifies attorneys when to hold meetings, file corporation reports, and pay state taxes in every state and Canadian province.
- Legislative Department**—Reports on pending legislation; furnishes copies of bills and of new laws enacted by Congress.
- Trust Department**—Acts as trustee under deed of trust, custodian of securities, escrow depositary and depositary for reorganization committees.
- Transfer Department**—Acts as registrar and transfer agent of stocks, bonds and notes.
- Federal Department**—Reports decisions of the United States Supreme Court and rulings of the various Government departments. Furnishes agent at Washington for common carriers to accept service of orders, process, etc., of Interstate Commerce Commission.

SERVICES

- Federal Income Tax Service**—Reports the Federal Income Tax Law and the official regulations, etc., bearing thereon.
- Federal War Tax Service**—Reports the Excess Profits Tax Law and practically all the other strictly Internal Revenue Tax Laws, except the Income Tax Law, due to the war, and the official regulations, etc., bearing thereon. (Does not touch on law provisions and regulations having to do with wine, spirits, soft drinks, tobacco, narcotics or child labor.)
- New York Income Tax Service**—Reports the New York Personal and Corporation Income Tax Laws and the official regulations, etc., bearing thereon.
- Federal Reserve Act Service**—Reports the Federal Reserve Act and the official regulations, etc., bearing thereon.
- Federal Trade Commission Service**—Reports the Federal Trade Commission Act and the Federal Anti-Trust Act (the Clayton Act) and the official orders, rulings, complaints, etc., bearing thereon.
- Stock Transfer Guide and Service**—Embodies extracts from the statutes and decisions of the various states and jurisdictions relating to transfers of a corporation's stock by executors, administrators, and guardians. Gives uniform requirements of the New York Stock Transfer Association, inheritance tax rates, and law provisions showing whether or not it is necessary to procure waivers or court orders. Reports new and amendatory legislation affecting stock transfers.

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

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Talks on Foreign Corporations

No. 15. Individual liabilities of stockholders for failure of corporation to qualify under foreign corporation laws.

A recent decision by the Supreme Court of Tennessee in *Equitable Trust Co. et al. v. Central Trust Company et al.*, holds that stockholders in a corporation doing business in Tennessee which has failed to comply with statutory requirements relating to the securing of authority to do business in that State, are individually liable for debts of the corporation the same as if they were members of a partnership. In accordance with its custom of furnishing information relating to important corporate developments, The Corporation Trust Company has prepared and sent out complete printed copies of this decision. Those who are interested may secure a copy from our nearest office without charge.

The fact that recovery in this case is awarded against a single stockholder in the sum of \$146,637.39 enhances interest in the decision. But that the conclusion of the court is not altogether novel is borne out by a prior decision in the same state and the court's citation of authority from other states. The court says: "It was expressly held by this court in *Cunningham v. Shelby*, 136 Tenn. 176, 188 S. W. 1147, L. R. A. 1917B, 572, that stockholders of a foreign corporation, attempting to do business as such in this state without having attempted to comply with our statutory requirements relating to foreign corporations, are liable on their contracts as partners,

although such contracts are made in the name of the corporation, and notwithstanding the stockholders did not know of such non-compliance, since the corporation was without power to contract, and as the stockholders could not bind it, they necessarily bound themselves.

To the same effect is the rule announced in *Taylor v. Branham*, 35 Fla. 297, 17 South, 552, 39 L. R. A. 362, 48 Am. St. Rep. 249; *Bigelow v. Gregory*, 73 Ill. 197; *Loverin v. McLaughlin*, 161 Ill. 417, 44 N. E. 99; *Hill v. Beach*, 12 N. J. Eq. 31; *Lasher v. Stimson*, 145 Pa. 30, 23 Atl. 552; *Guckert v. Hacke*, 159 Pa. 303, 28 Atl. 249."

On the other hand the Missouri cases of *Tribble v. Holbert*, 143 Mo. App. 524, 127 S. W. 618, and *Journal Co. v. Nelson*, 133 Mo. App. 482, 113 S. W. 690, held that in the absence of fraud stockholders of a foreign corporation doing business in Missouri without having qualified, are not liable as partners. Other cases which hold against partnership liability are: *A. Leschen & Sons Rope Co. (Texas)* 159 S. W. 1018; *National Bank of Wichita v. Spot Cash Coal Co.*, 98 Ark. 597, 136 S. W. 953; and *Beal v. Childress*, 92 Kan. 109, 139 Pac. 1198.

Statutes as in North Dakota may expressly provide for individual liability against stockholders for failure to qualify. See Section 5241, Compiled Laws of North Dakota, 1913 and *Chesley vs. Soo Coal Co.*, 19 N. D. 18, 121 N. W. 73.

Brief History of New York Business Corporations

*By Le Roy L. Luther,
of the Secretary of State's Office, Albany*

The legislature of the State of New York, at its session in the year 1811, enacted Chapter 67 of the Laws of that year, and planted the seed which later developed into the present Business Corporations Law. While the State previously chartered many corporations by Special Act, and in the year 1784 provided a general law for the formation of religious corporations, it did not, until 1811 provide a general statute for the organization of stock corporations. The powers conferred, as well as the business which a corporation formed thereunder might engage in, was very limited, being confined to the business of manufacturing of woollen, cotton and linen goods, and the making of glass, anchors, shot, etc. Year after year, the Act was amended so as to include other lines of business: That of manufacturing beer and ale was added in 1816, and the manufacture of leather in 1817.

Corporations continued to be formed under the Act of 1811 until the enactment of Chapter 40, Laws of 1848, providing for the formation of corporations "for manufacturing, mining, mechanical and chemical purposes." The same legislature, however, enacted Chapter 299 of the Laws of that year, which provided for the formation of corporations to engage in the business of mining guano. Then followed Chapter 117, Laws of 1853, to conduct building operations; Chapter 776, Laws of 1857, for the breeding of domestic

animals; Chapter 820, Laws of 1872, for homesteads; Chapter 143, Laws 1874, for operating hotels, and Chapter 149, Laws of 1874, for printing and publishing.

Then followed Chapter 611, Laws of 1875, known as the "Business Corporations Law of 1875," which Act might be termed the grandfather of our present Business Corporations Law. To have made this Act more useful, there should have been a repealing clause expunging from the record the great mass of incongruous matter embraced in the Acts immediately preceding it. There were several laws almost identical and under which corporations of a similar character could be created. The Act of 1875 contributed its quota of confusion.

All the laws relating to corporations were codified in the general revision of 1890 and resulted in the enactment of the Business Corporations Law (Chapter 567, Laws of 1890), the direct parent of our present Business Corporations Law. Every time the Legislature touched the subject of corporations for business purposes, up to the passage of this Act, the result was a duplication of statutes.

The Act of 1890, with its valuable amendment by Chapter 691, Laws of 1892, materially liberalized the law governing corporations of that character both as to the wide range of business such a corporation might engage in, and the removing of many objectionable features relating

to a stockholders' individual liability.

As a result of the Report of the Board of Statutory Consolidation, the legislature, in the year 1909, enacted the Consolidated Laws, Chapter 4 of which is our present Business Corporations Law (Chapter 12, Laws of 1909.)

The enactment of the Law of 1890, followed by its amendment, was the direct cause of the great growth of corporate enterprises in the State of New York.

While the State was very chary in the conferring of corporate powers under the earlier statutes, business people were even more cautious in availing themselves of the right to do business in a corporate capacity.

The first certificate of incorporation under the Act of 1811, was filed in the office of the Secretary of

State on April 19th of that year, by the Whitesborough Cloth Manufactory. During the ensuing twenty years, the number of new corporations formed averaged only ten for each year. Since 1892, there has been a steady and almost uniform increase in number, until in the fiscal year 1921-1922, it reached a total of 16,141 new corporations having an aggregate capital stock of \$2,055,236,000.00, upon which were paid organization taxes amounting to \$1,027,618.22. There was also paid the Secretary of State during the year, \$614,508.22, for the filing of original and amended certificates. The annual franchise taxes received during the year from corporations of this character were in excess of \$35,000,000.00.

Domestic Corporations

Arkansas

Overlooking Liability for Taxes no Mistake. Failure to take into consideration taxes due the federal government in fixing the sale value of stock is not such a mistake as will afford a ground for equitable relief. Relief from consequences of mutual mistake will be granted only in exceptional cases and only where the mistake arose from a mutual misapprehension of the facts, or of the legal operation of the instrument under consideration. *Quinn v. McLendon et al.*, 238 S. W. 32.

Connecticut

Payment of Dividends to Stockholders of Record at a Future Date. The custom of declaring dividends to stockholders of record at a specified date payable at some future day is not open to any reasonable objection nor opposed by any principle of public policy. So in the present case a vendor of stock who negligently failed to deliver certificates in time to permit a transfer before the books were closed was held liable to his vendee for dividends paid by the corporation, as for money had and received, since the unrecorded transfer was good as between the parties. *Richter et al. v. Light*, 116 A. 600 L.

Delaware

To Ascertain Value of His Stock is Proper Motive Giving Stockholder Right to Examine Books. The Superior Court of Delaware says: "Where the reason or motive for inspection is a proper one, the court will grant the right to inspect such books and papers of the respondent corporation as may be necessary to furnish the information desired by the petitioner, such right to be exercised at reasonable and proper times and places. The reason alleged for inspection in this case is to obtain information that will enable the petitioner to ascertain the value of his stock. The reason alleged seems to be a proper one, and the court are not convinced by anything averred in respondents' return that it is improper, or not made in good faith." State ex rel. Rogers v. Sherman Oil Co., 117 Atl. 122.

Right to Make Copies of Books, Records, etc., will be confined to such as are necessary for the purpose for which examination is granted. State ex rel. Rogers v. Sherman Oil Co., 117 Atl. 122.

Has Stockholder a Right to Compel Examination of Books of a Subsidiary Corporation? Mandamus to compel examination of books of a corporation, a large amount of whose stock is owned by the corporation in which relator is a stockholder, will not be granted. Distinction is made between the instant case, where proceeding is by mandamus, and a previous case where the stockholder instituted equitable proceedings. The court says: "So far as the court are informed, this is the first time the question we are now discussing has been distinctly raised in this or any other state. And it so happens that the one case in which a question somewhat analogous to the present one was passed on was in our own state, viz.: Martin v. Martin, 10 Del. Ch. 211, 88 Atl. 612, 102 Atl. 373. But that case was different from the one at bar in these particulars: (1) It was a court of equity where the principles of law are not so controlling as in this court. (2) The companies that were required to produce their books and disclose the information required in connection with the charge of fraudulent mismanagement of corporate affairs, were practically one and the same in so far as management and control were concerned. There were eight companies engaged in the same general business. The president of the respondent company was president of all the allied companies but one, the respondent company owned all the shares of stock of seven of them. All the members of the boards of directors of four of the allied companies were directors of the respondent company, and a majority of the members of the boards of directors of the other four were directors of the respondent company.

It was held that the subsidiary corporations should be regarded by a court of equity as mere instrumentalities of the respondent, and compelled to produce the books of such companies, for discovery, as well as its own.

Certainly a court of equity, under the searching and almost unlimited power it possesses, and its disregard of mere forms, in discovering and revealing fraud, had, under such circumstances the right to compel the production of the books and papers of such companies. The case was different from the one before us, not only because of the character of the court in which it was brought, but also because of the close relations existing between the companies and the identity of of management and control. There were not, in fact, independent entities, or separate and distinct, as in the present case." *State ex rel. Rogers v. Sherman Oil Co.*, 117 Atl. 122.

Consent of President to a Receivership. The president of a corporation has no implied or inherent power to consent to the appointment of a receiver for the purpose of winding up its affairs. *Bruch v. National Guarantee Credit Corporation*, 116 Atl. 738.

Removal of Directors. A director of an industrial or business corporation cannot be removed by his fellow directors. That power, if it exists at all, belongs to the power that elected him, viz., the stockholders. Granting that the corporation can remove a director the power was not conferred on the directors by section 3 of the General Corporation Law which gives to "officers, directors and stockholders" all powers expressly given in the certificate of incorporation and the certificate gives to the directors all powers as may be exercised by the corporation. In any case, a director before he can be removed must be given notice and an opportunity for a hearing. *Bruch v. National Guarantee Credit Corporation*, 116 Atl. 738.

Resisting Transfer of Stock Illegally Issued. A transferee of stock with notice that it was issued without consideration can not compel the issuance of a new certificate even though the stock was issued as fully paid and non-assessable. It is not a sufficient consideration under Const. Art. 9 par. 3 that stock is issued upon an agreement to render future services nor to lend one's name to the corporation; and an issue of stock by directors to themselves without consideration is fraudulent. The corporation is not estopped to set up the illegality of the issue by a recital in the stock certificate that it is full-paid and non-assessable. *Bowen v. Imperial Theatres, Inc.* 115 Atl. 918.

Georgia

Voting Trust Void When It Precludes Stockholder From Using His Independent Judgment in the General Interests of the Corporation. The right to vote stock can not be separated from the ownership in such a sense that the elective franchise shall be in one man, and the entire beneficial interest in another. Hence a contract between the majority stockholders of a private corporation whereby one of them is given exclusive voting power for all the pooled stock, to the end that specified persons shall hold certain offices at salaries fixed in the agree-

ment, irrespective of whether or not it be for the best interests of the corporation and stockholders as a whole to have such persons hold the offices or pay the salaries attached thereto, is against public policy and void. *English et al. v. Rosenkrantz*, 111 S.E. 198.

Indiana

Redemption of Preferred Stock. Dividends. The words "redemption" and "repayment" held, in the context of the certificate, to mean the manner of application of the funds and assets of the corporation on final dissolution or insolvency; and modification of the terms of the certificate by parol evidence is not permissible. Furthermore, under sec. 5092, Burns' Ann. St. 1914 common stockholders have no power to vote the retirement of preferred stock without the consent of the holders thereof. Sec. 5096, Burns' Ann. St. 1914 does not prevent the payment of more than 8% to preferred stockholders, after a dividend has been paid on the common stock. *Star Pub. Co. v. Ball*, 134 N. E. 285.

Missouri.

Violation of Provision of Stock Subscription Agreement Does Not Render It Void. A provision in a stock subscription, made before the corporation is organized, and with a view to securing a legal incorporation, which provides what shall be done or how the money shall be expended after the corporation is formed is not a valid condition precedent, and such subscription is to be regarded as an absolute one. So where the subscription provided for the erection of a hotel at a cost of \$150,000 but the corporation upon its organization built one at the cost of \$200,000; held, that the subscription was not thereby rendered void. *Drake Hotel Co. v. Crane*, 240 S. W. 859.

De Facto Corporation. Non-compliance with statutory requirement that 50 per cent of capital stock be paid up at the time of filing the articles of association does not of itself render the corporation void nor furnish any ground for attacking the corporation by any one but the state. *Drake Hotel Co. v. Crane*, 240 S. W. 859.

Montana.

Sale of Part of Assets by Directors. Section 3897, R. C. comprehends a sale of all rather than of a part of the corporate property. It is not a restriction on the powers of sale granted by sections 3889 and 3833 R. C. which are declaratory of common law rules. *Wortman et al. v. Luna Park Amusement Co.*, 201 Pac. 570.

New York

Discovery and Inspection of Books Permitted Providing They Relate to the Merits of the Action. The general effect of rule 140 of

the Rules of Civil Practice is to shift to the adverse party the burden of showing that discovery or inspection is not necessary. The right of the plaintiff stockholders must be considered in their character as litigants and a defendant corporation through its officers ought not to be permitted to escape the consequences of misconduct and mismanagement by withholding from the stockholders evidence necessary for the successful assertion of their rights. *Bell et al. v. Frank Gilbert Paper Co. et al.* 193 N. Y. Supp. 26.

Necessity of Stockholders' Consent to Mortgage. A chattel mortgage given without the written consent of two-thirds of the stockholders is null and void under section 6 of the New York Corporation Law. *In re Astell Engineering & Iron Works, Inc.*, 278 F 743.

Transfer of Assets to Another Corporation. In the absence of statute permitting it, no corporation, against the protest of one stockholder, may transfer all its property and assets to another corporation to the end that the latter may take its place and carry on its business, unless the corporation is insolvent and the sale is to save its stockholders from further loss. And where the value of the stock to a pledgee consisted largely in the control it gave him over the corporation, he is entitled to resist the transfer and is not estopped by the assent of the pledgor. *Murrin v. Archbald Consol. Coal Co. et al.*, 232 N. Y. 541.

Dissolution Because of Equally Divided Control. The proceeding being purely statutory (Sec. 172 Gen. Corp. Law) it must be conducted strictly in accordance with the statute. *In re Willat Studios and Laboratories, Inc.*, application of Bauman et al. 194 N. Y. S. 243.

Ohio

Election by Minority Stockholders. The annual meeting of stockholders was adjourned subject to call, no election having taken place. Two stockholders acting on the theory that the majority did not intend to call another meeting, assumed to call a meeting under section 8647 General Code. Held that there had been no final adjournment of the regular annual meeting and hence if the minority believed no adjourned meeting would be held they had the right to demand that the annual meeting be reconvened and if refused mandatory injunction would lie to compel the secretary to send out notices. Further, the minority having proceeded in disregard of the by-laws and regulations of the corporation as to manner of giving notice, place of meeting, and the number of stockholders constituting a quorum the attempted election was invalid. *State ex rel. Webber v. Shaw*, 134 N. E. 643.

Texas.

Transfer of Stock. The failure of the directors of a corporation to prescribe in its by-laws the manner in which its stock duly issued and

(Continued on page 76)

Are You Analyzing the T

THE Federal Trade Commission is overturning many long-accepted selling, advertising and labelling practices. The U. S. Supreme Court is sustaining the Commission's right to do so.

Are you keeping in touch with what it has in hand about practices in your client's lines?

Manufacturers may say, "We're in no fear. We are not wrong-doers." But that is not the point. Things that were accepted as perfectly all right, and good business, a few years—and even a few months ago, are being ruled out by the Commission today as unfair competition.

Royal Baking Powder Company, for instance, ordered, in effect, either to quit advertising its Dr. Price's brand under that name or go back to the old Dr. Price formula.

One of the largest automobile tire manufacturers summoned by the Trade Commission for advertising that it furnishes certain unique services at service stations, when, the Commission's complaint alleges, "such service as is rendered being in fact furnished by dealers."

A great soap manufacturer charged by the Commission with unfair competition in advertising a brand of soap as being of high grade because it is white when, the complaint claims, the fact that it is white adds nothing to its cleansing value.

With such policies in the making, what careful firm, jealous of its good name, can afford to proceed

with its own advertising and selling practices in blindness as to what attitude the Federal Trade Commission is taking towards just such practices?

Far-sighted business houses will not wait until complained against by the Commission, but will want to know **IN ADVANCE** what the Commission is likely to rule.

The Federal Trade Commission Service of The Corporation Trust Company not only keeps you informed on the *actions* of the Commission: it enables you to classify all past decisions, and all the new ones as handed down, into **TYPES** of business practice, so you can study and analyze the new complaints that interest you, compare them with those already decided, and chart the **PROBABLE** course of the Commission in reference to any practices in your client's line, well in advance.

"We are painfully surprised to note that our name is included in this complaint," begins the answer of one firm to a complaint entered against it by the Commission. "The injury done our good name . . . will take a long time to be forgotten by our customers." There is no reason for any firm being thus surprised if the Federal Trade Commission Service is properly used.

Send today for detailed description—or better, let us send the Service compilation to date on ten days' approval. Return if not satisfactory, otherwise we bill you only \$15, covering subscription to May 1, 1923.

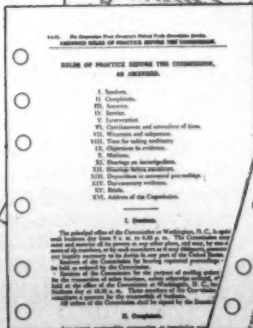
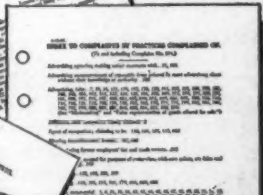
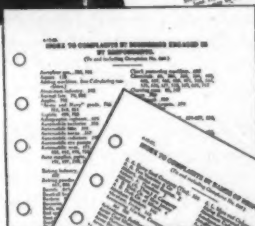
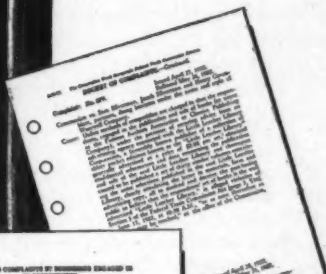
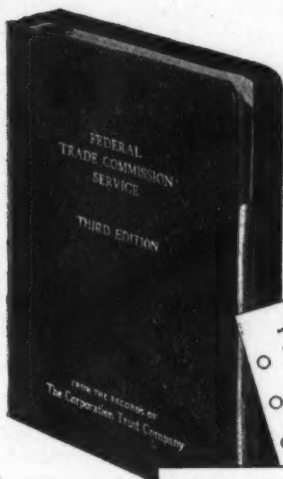
THE CORPORATION TRUST COMPANY

37 Wall Street, New York

The Commission's Course?

EXPLANATION OF PAGES

First there is the Docket of Complaint giving a summarized history of each case before the Commission from the moment it is entered until it is finally disposed of. The complaints are indexed in three ways—first by practices complained of, then by businesses engaged in by the various respondents, and finally by names of the companies involved. Every Supreme Court decision and decision of the Circuit Court of Appeals in cases involving the Commission's orders will be given in full. In addition, there are sections giving the text of the Federal Trade Commission Act, and the Clayton, Sherman and Webb Acts, and the conference rulings and rules of practice before the Commission.



(Continued from page 73)

outstanding should be transferred does not suspend the operation of Art. 1168, Ann. Civ. St. 1914 requiring that stock shall be transferrable only on its books; and an indorsement on the certificate "transferrable only on the books of the corporation in person or by attorney, on surrender of this certificate properly indorsed" is a substantial compliance with the statute. *Walker Caldwell Producing Co. v. Menefee et al.*, 240 S. W. 1023.

Effect of Provision that Stock is "Transferrable Only on the Books" when indorsed on the certificate, is to qualify it against free and open sale and transfer so as to pass the legal title, precluding the corporation from asserting against a transferee the unlawful issue of such certificate or want of title in the person to whom originally issued. *Walker Caldwell Producing Co. v. Menefee et al.*, 240 S. W. 1023.

Utah

A Corporation or a Partnership Has a Right to Adopt Any Name it Chooses. Hence in a controversy as to whether the defendant was a corporation or a partnership the name employed is no criterion. *Ogden & Provision Co. v. Wyatt et al.*, 204 Pac. 978.

Washington

A Family Conference Is Not a Corporate Meeting in the absence of the intention that it should be considered such, even though the family comprised all the stockholders of the corporation and all were present at the meeting. *Barnett v. Joseph Mayer & Bros. et al.*, 205 Pac. 396.

Wisconsin

A Stockholder Has an Absolute and Unconditional Right of Inspection regardless of the motive inducing him to desire it. That the inspection would disclose statements not entered on the books and thus involve the company in difficulty because of illegal tax returns made, is no ground for denying inspection. *State ex rel. McClure v. Malleable Iron Range Co. et al.*, 187 N. W. 646.

Foreign Corporations

Alaska

Capacity of a Non-Registered Corporation to Sue. The right of a foreign corporation to sue is not affected by its having previously done business without complying with statutory requirements, provided that at the time the cause of action arose and the action was brought the corporation had ceased to do business and was present in the territory

merely for the purpose of winding up its affairs. Although under section 660 Comp. Laws of Alaska where a corporation has failed to qualify "all its contracts shall be void as to the corporation" a defendant who fails to plead the incapacity of the corporation waives the defense that the contract is void at his election, and a recovery on the contract will be sustained. *Ross-Higgins Co. v Protzman et al.*, 278 F. 699.

Alberta, Canada

Sale of Shares Before Obtaining Certificate to do Business is Illegal. A subscription for stock made before a certificate to do business has been issued to the corporation is illegal and void, being in direct contravention of section 4 of the Saskatchewan Sale of Shares Act 1916. *Re: Dauntless Manufacturing Co., Ltd.* 63 D. L. R. 457.

District of Columbia.

Baseball Exhibit Not "Commerce" nor is it "Interstate Commerce" merely because the players in order to give the exhibition must cross state lines. *Federal Base Ball Club of Baltimore, Inc. v. National League of Professional Base Ball Clubs et al.*, 42 Sup. Ct. 465.

Florida

Validating a Voidable Mortgage. A voidable mortgage to a foreign corporation can be validated by a subsequent act of the legislature, and a conveyance of lands by a mortgagor expressly reciting that they are subject to the lien of a mortgage which is voidable, validates that mortgage. *Producers' Naval Stores Co. et al. v. McAllister*, 278 F. 13.

Iowa

Service on Agent After Termination of Right to do Business. On holding such service valid the Court said: "It is not the spirit of the law to permit a corporation having a process agent in a foreign jurisdiction to make contracts in that jurisdiction, and, by withdrawing therefrom or by having its authority revoked, compel parties litigant to seek the courts of the corporation domicile for the enforcement of claims or rights arising antecedent to the revocation or withdrawal." *McClamrock v. Southern Surety Co.* 187 N. W. 41.

Kentucky

A Foreign Corporation May Be "Engaged in Business" Although It Has Only One Customer In The State. In this case a non-resident sales manager of the defendant foreign corporation came into Kentucky for the purpose of adjusting controversies arising out of a sale of goods to the plaintiff in Ohio. The visits, three in number, in a period of fifteen months, finally resulted in the substitution of a new price agree-

ment for the goods previously sold. Held, that the evidence showed a series of transactions with the plaintiff and that the sales manager in assuming to act for the company in the adjustment of controversies with its only customer, justified the inference that he had charge of the business for his company in Kentucky and that the defendant thereby manifested its presence in the state for the purpose of doing business therein. *Moore et al. v. Racine Rubber Co.* 238 S. W. 381.

Missouri

Soliciting and Taking Orders by a Traveling Salesman is not "Doing Business." A foreign corporation having no license to do business in Missouri, and no place of business or office in the state and not doing business in the state except to solicit and take orders through a traveling salesman, was not "doing business" within the meaning of section 2746 R. S. 1919. *Bauch v. Weber Flour Mills Co.*, 238 S. W. 581.

New York

Enforcing Stock Registration in a Foreign State. A transfer of stock on the books of a foreign corporation can be enforced in New York when the corporation maintains a stock transfer agency within the State. In this case stock was sold and title made conditional on future payment. The certificates which conferred upon the transferee all the indicia of ownership passed into the hands of an innocent purchaser for value. When presented to the Sugar Co. for transfer on the books there was a refusal. Held that the Company was estopped from asserting that the sale was conditional, and that notwithstanding a by-law, set forth on the certificate, requiring a surrender of the certificate and the consent of the Company to a transfer, it was the duty of the Company to make the transfer when requested by this plaintiff. Since the Company maintains a stock transfer agency in this State the transfer may be enforced here. *Hale v. West Porto Rico Sugar Co. et al.* 193, N. Y. S. 555.

Pennsylvania

Liability of Directors Under A Foreign Penal Statute. A Colorado statute making directors individually liable for the debts of a corporation which has failed to file its annual report held to be penal and not enforceable against directors of a foreign corporation resident in Pennsylvania, even though the same statute is construed by the Colorado courts as creating a contractual liability. *Nesbit v. Clark et al.* 116 Atl. 404.

Acceptance of An Offer of Compromise Does Not Constitute "Doing Business." A contract of sale constituting an interstate transaction between a foreign corporation, the seller, and a domestic corporation was broken by the latter. Held that the acceptance of a

compromise agreement by the domestic corporation in Pennsylvania to pay a lesser sum than that due on the original contract did not constitute "doing business" subject to Act June 8, 1922. (P. L. 710) par. 4, as amended Act April 22, 1915 (P. L. 170; Pa. St. 1920, par. 11057). *Meaker Galvanizing Co. v. Charles E. McInnes & Co., Inc.*, 116 Atl. 400.

Taxation

Georgia

Classification of Stock for Taxation Purposes. The City of Atlanta, Georgia, petitioned the Supreme Court of Georgia for the discovery of the names of the persons residing within its corporate limits who were the owners of the shares of stock of the Coca-Cola Company, a Delaware corporation, together with the number of shares owned by each person. The discovery was for the purpose of imposing a tax upon the shares of those persons residing within the corporate limits. Upon discovering who the stockholders were and the amount of stock each owned, the validity of the tax then levied could be ascertained. The discovery was allowed and the tax declared valid. The classification of the stock of corporations by the laws of the state whereby the shares of domestic corporations are exempt, and the shares of foreign corporations are liable for taxation, when owned in the state, is not an unlawful classification. Nor is it a violation of section 2 of article 7, or paragraph 2 of section 1 of article 1 of the Constitution of Georgia. Neither is such classification in violation of the Fourteenth Amendment to the Federal Constitution. *Coca-Cola Co. v. City of Atlanta*, 110 S. E. 730.

Illinois

Franchise Tax Not Invalid as Interference With Interstate Commerce. A franchise tax assessed against a foreign corporation for the privilege of doing business within the state, computed by the Secretary of State in accordance with section 67fb, p. 719, Hurd's Statutes, 1917, although indirectly affecting interstate commerce, did not make the act unconstitutional. *Hump Hairpin Manufacturing Company v. Emmerson*, Secretary of State of Illinois, (U. S. Supreme Court, October term 1921, not yet officially reported).

New York.

Placing Value of \$100 per Share on Non-Par Stock For Purposes of Taxation Is Illegal. The Appellate Division, Third Department,

holds that provisions of the Tax Law which assume that non-par value stock has a value of \$100 per share for purposes of the license tax are unwarranted, and the provision that for purposes of the minimum franchise tax non-par stock "shall be deemed to have a face value of \$100" is unconstitutional. The Court holds that the minimum franchise tax imposable upon a foreign corporation is determinable by its actual capital employed within New York. People of the State of New York ex rel. Terminal and Town Taxi Corporation v. Walsh and others, reported at addenda pages 94-97 The Corporation Trust Company's New York Income Tax Service.

Ohio

Taxation of Foreign Corporation on Proportion of Authorized Capital Stock in Ohio is Sustained. The Air-Way Electric Appliance Corporation, organized in Delaware, was admitted to do business as a foreign corporation in Ohio. Its report filed with the Tax Commission on August 1, 1921 showed that of 400,000 shares of its authorized capital stock, 40,475 shares of founders stock and 10,010 of common stock without par value had been issued; that the actual value of its property in Ohio was \$458,278.76; that the amount of business transacted in Ohio in the eleven months of its operation was \$250,594.58; that the value of its property owned and used outside of Ohio was nothing; and that all its business had been "handled in Ohio." Under section 5503, a fee of three-twentieths of one per cent is assessable upon the proportion of the authorized preferred stock represented by property owned and used and business transacted in Ohio, and five cents per share upon the proportion of non par value stock, represented by property owned and used and business transacted in Ohio. A tax of \$20,000, being five cents per share on the total authorized non par value common of the Air-Way Electric Appliance Corporation, was assessed. The United States District Court for the Southern District of Ohio, Eastern Division, upholds the tax law and this assessment as a matter of law, but grants an opportunity to the plaintiff to seek a review of the assessment before the Tax Commission, saying, in part: "The plaintiff submits an affidavit that of its total business, amounting to \$250,594.58, the property sold within the state is represented by \$70,602.30. It would seem that this court may not consider such affidavits to condemn the conclusion reached by the Commission. Manufacturers Light & Heat Co. v. Ott, 215 Fed. 940, 950. We feel, however, that a determination of the proportion of plaintiff's property owned and used and business done inside and outside of Ohio is a proper subject of inquiry, absolutely essential to the determination of the question whether any part of the tax is levied upon the proportion of its authorized stock, if any, represented by property owned and used and business transacted beyond the state." Air-Way Electric Appliance Corporation v. Archer, No. 193 W. S. Dist. Court, S. D. of Ohio, Eastern Division.

Some Important Matters for July, August, September, October and November

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service maintained by The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of reports and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALASKA—Annual License on certain occupations due on or before November 1—Domestic and Foreign Corporations.

ARKANSAS—Anti-Trust Affidavit due on or before August 1—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax due on or before August 1—Domestic and Foreign Corporations.

Annual Report due on or before August 15—Domestic and Foreign Corporations.

GEORGIA—Certified statement for registration due on or before November 1—Domestic and Foreign Corporations.

IDAHO—Annual Statement due between July 1 and September 1—Domestic and Foreign Corporations.

Annual License Tax due between July 1 and September 1—Domestic and Foreign Corporations.

ILLINOIS—Annual License Fee or Franchise Tax due on or before July 1 but may be paid up to July 30 without penalty—Domestic and Foreign Corporations.

INDIANA—Annual Report between June 1 and July 31—Domestic Corporations.

IOWA—Annual Report due between the first day of July and the first day of August—Domestic and Foreign Corporations.

Additional statement due at the time of making the Annual Report in July—Foreign Corporations.

MAINE—Annual Franchise Tax due on or before September 1—Domestic Corporations.

MARYLAND—Franchise Tax due on or before September 1—Domestic Business Corporations.

MICHIGAN—Annual Report due during July or August—Domestic and Foreign Corporations.

MISSISSIPPI—Annual Report to factory inspector due during July—Domestic and Foreign Corporations.

MISSOURI—Annual Statement, Registration and Anti-Trust Affidavit due during July—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due during July—Foreign Corporations.

Annual Statement due on or before September 15th—Foreign Corporations.

NEW MEXICO—Annual Franchise Tax Report due on or before September 1—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before November 30—Domestic and Foreign Corporations.

NORTH CAROLINA—Capital Stock Report to determine amount of Franchise Tax due during July—Foreign Corporations.

Annual Franchise Tax due on or before first day of October or any time after August 15—Domestic Corporations.

Annual Franchise Fee due on or before first day of December or any time after October 15—Foreign Corporations.

NORTH DAKOTA—Annual Income Tax due between June 1 and July 15—Domestic and Foreign Corporations.

Corporation Report due during July—Domestic and Foreign Corporations.

OHIO—Annual Report due during July—Foreign Corporations.

OKLAHOMA—Annual License Tax Report due on or before July 31—Domestic and Foreign Corporations.

Annual Capital Stock Affidavit due between July 1 and August 1—Foreign Corporations.

OREGON—Annual License Fee due within 30 days after July 15—Domestic Corporations.

License Fee due between July 1 and August 15—Foreign Corporations.

UNITED STATES—Third Installment of Income and Excess Profits Taxes imposed for the calendar year 1921, due on or before September 15.

Annual Capital Stock Return due during July (tax payable within ten days after notice and demand)—Domestic and Foreign Corporations.

UTAH—Corporation License Tax due between November 15 and December 15—Domestic and Foreign Corporations.

PUBLICATIONS

The following publications may be obtained without charge from the nearest office of The Corporation Trust Company System:

Shares Without Par Value. This pamphlet contains what we believe to be the only published synopses of the 23 non-par value laws in force at the present time.

New York Non-Par Value Law, as Amended. Includes important changes by the 1921 Legislature.

What Constitutes "Doing Business." (Available only to members of the bar.) The more important court decisions on "doing business," handed down in the course of the past ten years, have been reported in The Corporation Journal. These have been arranged under state headings and are reprinted in pamphlet form.

Talks on Foreign Corporations. A series of articles has been appearing for some time under this heading in The Corporation Journal. For the convenience of those interested in the subject of foreign corporations, we have reprinted "Talks" Nos. 1-8 in pamphlet form. The articles will continue to appear in The Corporation Journal.

A Most Important Decision. Gives full opinion of the Tennessee Supreme Court in a recent case holding stockholders of a foreign corporation liable as partners for all debts of the corporation contracted in the state, because the corporation was not properly qualified to do business in Tennessee.

Revenue Act of 1921. Contains full text of the new Revenue Act, approved by the President November 23, 1921.

Reorganizations, Mergers, Consolidations. Gives provisions of the Federal Revenue Act of 1921 of interest to those organizing or reorganizing corporations, together with the official rulings and regulations in force April 13, 1922.

New York Income Tax Laws. Gives full text of the personal and corporation income tax laws as amended by the 1922 Legislature.

Business Corporations Under the Laws of Delaware. Gives advantages under the law, statutory requirements and forms; includes a description of shares without par value. The General Corporation Laws are published in a separate booklet.

Extracts from the Statutes of the Various States Relating to the Admission of Foreign Business Corporations may be had by COUNSEL who are interested in the qualification of a particular corporation in a state or group of states. Please indicate in which states you are interested. These printed statements show the documents to be filed, fees and taxes to be paid and the statutory penalties for failure to comply in the states under consideration.

Issuance, Transfer and Registration of Corporation Stock is the title of our pamphlet, printed to supply the demand for information on these subjects.

New York Transfer Requirements. This is a card listing requirements to be observed in transferring various classes of stock in New York.

Illinois Transfer Requirements. Gives requirements to be observed in Illinois.

THE CORPORATION JOURNAL

The Corporation Journal is sent without charge to those requesting that their names be placed on the mailing list. A substantial ring binder will be furnished on receipt of \$2.00.

The Accepted Federal Tax Authority

There is only one Federal Tax Service so indubitably authoritative that it is cited by name by Treasury officials, Revenue Collectors, litigants in Federal Courts, Federal judges in their opinions, and by the Chief Justice of the United States Supreme Court. That Service is the Federal Tax Service of The Corporation Trust Company.

Is any other Service, then, good enough for YOU to use as your guide in making the tax returns to which you (or your client) must take oath, and on which you (or your client) must pay?

A serious question.

THE CORPORATION TRUST COMPANY

37 Wall Street, New York

Affiliated with

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15 Exchange Place, Jersey City

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Jersey City, 15 Exchange Place

Portland, Me., 281 St. John Street

Wilmington, du Pont Bldg.

[Corporation Trust Co. of America]

Albany, 158 State Street

Buffalo, Ellicott Square

